

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAZARUS CLYBURN-DAWSON,

Petitioner,

v.

Case # 20-CV-06544-FPG
DECISION AND ORDER

SUPERINTENDENT, ATTICA,

Respondent.

Pro se Petitioner, Lazarus Clyburn-Dawson, is a prisoner incarcerated at the Attica Correctional Facility. He has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. On August 18, 2020, the Court concluded that the petition was untimely, but gave Petitioner an opportunity to be heard before the case was dismissed. *See* ECF No. 4. On September 14, 2020, Petitioner filed his response. ECF No. 7.

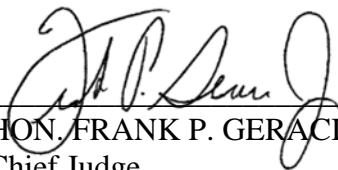
Petitioner alleges that, with respect to his coram nobis motion, the New York Court of Appeals failed to timely inform him that leave to appeal had been denied. *See id.* at 4-5. Even accepting Petitioner's claim, it is immaterial. As the Court stated in the prior order, Petitioner had one year to file his habeas petition from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." ECF No. 4 at 1. That date was December 15, 2015, so the limitations period expired in December 2016. *Id.* at 2. Furthermore, although Petitioner later filed a coram nobis motion in state court in 2018, his motion did not serve to toll the statute of limitations under 28 U.S.C. § 2244(d)(2). This is because "[t]he filing of a state court motion for post-conviction collateral relief filed *after* the statute of limitations already has expired does not toll the statute of limitations." *Id.* at 2-3. Thus, any

improprieties or errors with respect to the handling of Petitioner's coram nobis motion are irrelevant, as the limitations period had already elapsed. *See* ECF No. 4 at 3 n.1.

Petitioner offers no other justification for his untimely petition. Accordingly, for the reasons stated in the prior order, ECF No. 4, the Court concludes that the petition is untimely, and the petition is hereby DISMISSED WITH PREJUDICE. Because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is DENIED. The Clerk of Court shall enter judgment and close the case.

SO ORDERED.

Dated: September 22, 2020
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court